

[REPUBLIC ACT NO. 9856, December 17, 2009]

**AN ACT PROVIDING THE LEGAL FRAMEWORK FOR REAL ESTATE
INVESTMENT TRUST AND FOR OTHER PURPOSES**

*Be it enacted by the Senate and House of Representative of the Philippines in
Congress assembled:*

ARTICLE I

GENERAL PROVISIONS

SECTION 1. *Short Title.* — This Act shall be known as "The Real Estate Investment Trust (REIT) Act of 2009".

SEC. 2. *Declaration of Policy.* — It is the policy of the State to promote the development of the capital market, democratize wealth by broadening the participation of Filipinos in the ownership of real estate in the Philippines, use the capital market as an instrument to help finance and develop infrastructure projects, and protect the investing public by providing an enabling regulatory framework and environment under which real estate investment trusts, through certain incentives granted herein, may assist in achieving the objectives of this policy.

SEC. 3. *Definition of Terms.* — For the purposes of this Act, the term:

(a) "Adviser" means a lawyer, accountant, auditor, financial or business consultant, and such other persons rendering professional advisory services to the real estate investment trust.

(b) "Affiliate" means a corporation that directly or indirectly, through one or more intermediaries, is controlled by, or is under the common control of another corporation, which thereby becomes its parent corporation.

(c) "Associate" of a person includes:

- i. Any relative of such person within the fourth (4th) degree of consanguinity or affinity; and
- ii. Any company in which he/she and his/her relative within the fourth (4th) degree of consanguinity or affinity, directly or indirectly, has an interest of twenty-five percent (25%) or more.

(d) "Cash Equivalent Items" means instruments or investments that are

highly liquid and marketable and are considered good as cash as determined in accordance with the rules and regulations prescribed by the Commission.

(e) "Commission" or "SEC" means the Securities and Exchange Commission of the Philippines.

(f) "Constitutive Documents" means the articles of incorporation and bylaws of a REIT.

(g) "Control" exists in favor of a parent corporation when it has the power to direct or govern the financial and operating policies of an enterprise so as to obtain benefits from its activities. Control is presumed to exist when the parent owns, directly or indirectly, through subsidiaries, more than one-half (1/2) of the voting power of an enterprise, unless in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control. Control also exists even when the parent owns one-half (1/2) or less of the voting power of an enterprise when there is power:

- i. Over more than one-half (1/2) of the voting rights by virtue of an agreement with investors;
- ii. To direct or govern the financial and operating policies of the enterprise under a statute or an agreement;
- iii. To appoint or remove the majority of the members of the board of directors or equivalent governing body; or
- iv. To cast the majority votes at meetings of the board of directors of equivalent governing body.

(h) "Corporation Code" refers to Batas Pambansa Bilang 68, otherwise known as the Corporation Code of the Philippines.

(i) "Deposited Property" means the total value of the REIT's assets based on the latest valuation determined in accordance with the rules and regulations promulgated by the Commission.

(j) "Distributable Income" means net income as adjusted for unrealized gains and losses/expenses and impairment losses and other items in accordance with internationally accepted accounting standards. Distributable income excludes proceeds from the sale of the REIT's assets that are re-invested in the REIT within one (1) year from the date of the sale.

(k) "Exchange" means any entity registered with the Commission as a stock exchange pursuant to the Securities Regulation Code.

(l) "Fund Manager" refers to the person responsible for the allocation of the deposited property to the allowable investment outlets and selection of income-generating real estate. It shall execute investment strategies for the REIT and oversee and coordinate all of the following activities:

property acquisition; property management; leasing; operational and financial reporting (including operating budgets); appraisals; audits; market review; accounting and reporting procedures, as well as refinancing and asset disposition plans. For clarity, a fund manager is considered independent from the REIT and its sponsors/promoters under this Act if it is in compliance with the independence, corporate governance (including the fit and proper rule) and other requirements prescribed by this Act, its implementing rules and regulations and the Commission.

(m) "Income-generating Real Estate" means real property which is held for the purpose of generating a regular stream of income such as rentals, toll fees, user's fees and the like, as may be further defined and identified by the Commission. The Commission may promulgate rules to include real rights over real property, provided they generate interest or other regular payments to the REIT.

(n) "Independent Director" means a director who has the qualifications and none of the disqualifications of an independent director specified in the Securities Regulation Code and its implementing rules and regulations.

(o) "IRR" refers to the Implementing rules and regulations promulgated to implement the provisions of this Act.

(p) "Investible Funds" refer to funds of the REIT that can be placed in investment vehicles other than income-generating real estate such as real estate-related assets, managed funds, government securities, and cash and cash equivalents.

(q) "Investor" means the owner of investor securities or investor shares.

(r) "Investor Securities" or "Investor Shares" mean shares of stock issued by a REIT or derivatives thereof.

(s) "Managed Funds" mean any arrangement whereby funds are solicited from the investing public and pooled for the purpose of investing in securities duly registered with and/or approved by the appropriate regulatory agency of the government for investment by the REIT.

(t) "Material Contract" refers to an agreement or arrangement where the amount involved is at least five percent (5%) of the deposited property of the REIT or which is not entered into in the ordinary course of business of the REIT: *Provided, however,* That the following shall be deemed a material contract regardless of the amount:

- i. Related party transactions under Section 8.11 hereof;
- ii. Contract between the REIT and fund manager;
- iii. Agreement between the REIT and property manager;
- iv. Agreements between and among shareholders such as voting trust agreements, pooling agreements, joint venture agreements or other

- shareholder agreements as may be determined by the Commission;
- v. Any acquisition or disposition of real estate by the REIT;
 - vi. Contracts relating to investments of the REIT under Section 8.3 hereof;
 - vii. Any contract creating mortgages, encumbrances, liens or rights on the real estate of the REIT;
 - viii. Contract of any nature that limits the declaration or distribution of dividends by the REIT;
 - ix. Any contract relating to joint venture, spin-off, consolidation or merger involving the REIT; and
 - x. Any contract that may be expected to materially affect the market activity and/or the price of the investor securities issued by the REIT as may be determined by the Commission.

(u) "Net Asset Value" or "NAV" means the total assets less total liabilities as determined by the implementing rules and regulations (IRR) of the Commission.

(v) "Net Income" means net income as determined under the Philippine Financial Reporting Standards (PFRS).

(w) "Overseas Filipino Investor" refers to an individual citizen of the Philippines who is working abroad, including one who has retained or reacquired his Philippine citizenship under Republic Act No. 9225, otherwise known as the "Citizenship Retention and Re-acquisition Act of 2003".

(x) "Parent" means a corporation which has control over another corporation, directly or indirectly, through one or more intermediaries.

(y) "Principal Officer" means the chairman of the board of directors, president, chief executive officer, chief operating officer, treasurer, chief financial officer, corporate secretary, vice president, their equivalent positions, or such other officers occupying positions of significant influence in a company as may be determined by the Commission.

(z) "Principal Stockholder" means a stockholder who is directly or indirectly the beneficial owner of more than ten percent (10%) of any class of security of the REIT.

(aa) "Public Shareholder" means a shareholder of a REIT other than the following persons (non-public shareholders):

- a. The sponsor/promoter of the REIT;
- b. A director, principal officer or principal shareholder of the sponsor/promoter of the REIT;
- c. A director, principal officer or principal shareholder of the REIT;
- d. An associate of a director, principal officer or principal shareholder of the REIT or its sponsor/promoter;
- e. A related corporation to the REIT or its sponsor/ promoter; and

- f. Any person who holds legal title to the shares of stock of the REIT for the benefit of another for the purpose of circumventing the provisions of this Act.

(bb) "Property Manager" refers to a professional administrator of real properties who is engaged by the REIT to provide property management services, lease management services, marketing services, project management services, including rent collection, tenant services, care of the physical plant, security, leasing, marketing of the property to outside prospects, and other similar services pertaining to the property under administration. For clarity, a property manager is considered independent from the REIT and its sponsor(s)/ promoter(s) under this Act if it is in compliance with the independence, corporate governance (including the fit and proper rule) and other requirements prescribed by this Act, its IRR and the Commission.

(cc) "Real Estate Investment Trust" or "REIT" is a stock corporation established in accordance with the Corporation Code of the Philippines and the rules and regulations promulgated by the Commission principally for the purpose of owning income-generating real estate assets. For purposes of clarity, a REIT, although designated as a "trust", does not have the same technical meaning as "trust" under existing laws and regulations but is used herein for the sole purpose of adopting the internationally accepted description of the company in accordance with global best practices.

(dd) "Real Property" shall have the same definition as "Immovable Property" under Article 415 of the Civil Code of the Philippines. Real estate, when used in this Act, shall have the same meaning as real property.

(ee) "REIT Plan" refers to the plan, including its amendments, of the REIT registered with the Commission.

(ff) "Real Estate-Related Assets" mean:

- a. Debt securities and listed shares issued by listed property companies; or
- b. Other funds and assets, including personal property, incidental to the ownership of real estate.

(gg) "Related Corporation" means the parent, subsidiary or affiliate of the REIT.

(hh) "Related Party" includes:

- i. The director, officer or principal stockholder of the REIT or associate of such persons;
- ii. The sponsor/promoter of the REIT;